

Assembly Bill No. 102

CHAPTER 567

An act to amend Section 1279.6 of the Code of Civil Procedure, to amend Sections 298, 298.5, 355, and 358 of, and to add Sections 298.6 and 306.5 to, the Family Code, and to amend Sections 103175 and 103180 of the Health and Safety Code, relating to name changes.

[Approved by Governor October 12, 2007. Filed with
Secretary of State October 12, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 102, Ma. Marriage: domestic partnerships: name.

(1) Existing law provides for the registration of domestic partnerships and requires 2 persons desiring to become domestic partners to complete and file a Declaration of Domestic Partnership with the Secretary of State. Existing law requires the Secretary of State to prepare the form for the Declaration of Domestic Partnership pursuant to specified requirements.

This bill would require the Declaration of Domestic Partnership form to contain an optional section for either party or both parties to indicate a change in name. The bill would allow one party or both parties to a registered domestic partnership to elect to change the middle or last names by which that party wishes to be known after registration of the domestic partnership by entering the new name in the spaces provided on the Declaration of Domestic Partnership form without intent to defraud.

(2) Existing law requires the Secretary of State to register the Declaration of Domestic Partnership in a registry for those partnerships and to return certain documents to the registrants, including a Certificate of Registered Domestic Partnership, except as specified.

This bill would require that the Certificate of Registered Domestic Partnership include the name used by each party before registration of the domestic partnership and any new name.

(3) Existing law requires that, before entering into or declaring a marriage, the parties first obtain a marriage license from a county clerk. Existing law requires the State Department of Public Health to prescribe the forms for the marriage license.

This bill would allow, on and after January 1, 2009, one party or both parties to a marriage to elect to change the middle or last names by which that party wishes to be known after solemnization of the marriage. The bill would require, on and after January 1, 2009, that the forms for the marriage license contain spaces for either party to indicate a change in name and would allow either party to change his or her name by entering the new middle or last names in the space provided on the marriage license application without intent to defraud.

(4) Existing law requires the State Department of Public Health to prepare and publish a brochure containing specified information for distribution to applicants for marriage licenses and persons who qualify as domestic partners.

This bill would require that the above brochure contain information concerning options for changing a name upon solemnization of marriage or upon registration of a domestic partnership. The bill would also require that information to include a notice that recording a change in name or the absence of a change in name on a marriage license application and certificate may not be amended once the marriage license is issued, but that options to adopt a change in name are preserved, as specified.

(5) Existing law, effective January 1, 2008, requires that a marriage license contain certain information, including the maiden name of the parties' mothers and the maiden name of the female, if previously married.

Existing law requires that each marriage performed be registered by the person performing the ceremony. Existing law creates an exemption from this requirement for members of a religious society or denomination not having clergy. Existing law requires those persons to file a License and Certificate of Declaration of Marriage containing specified information, including the maiden name of the parties' mothers and the maiden name of the female, if previously married and if her name has been changed. Existing law, effective January 1, 2008, requires those persons to file a License and Certificate of Non-Clergy Marriage subject to these provisions.

This bill would, effective January 1, 2009, modify the provisions relating to marriage licenses and Licenses and Certificates of Non-Clergy Marriage to conform with the above provisions allowing either party to a marriage to change his or her name. The bill would require that a marriage license and a License and Certificate of Non-Clergy Marriage include the last names at birth of each party's parents and any new name selected by a party for use upon solemnization of the marriage.

By requiring counties to alter their forms to conform with these requirements, the bill would impose a state-mandated local program.

(6) Existing law prohibits a person engaged in a trade or business of any kind or in the provision of a service of any kind from refusing to do business with, refusing to provide the service to, or imposing a specified requirement upon the use of a name, as a condition of doing business with or providing the service to, a woman in connection with her use of her birth name or former name.

This bill would extend these protections to any person, and would apply them, in addition, to a person's use of a name adopted upon solemnization of marriage or registration of domestic partnership.

(7) Existing law provides that, upon application for an original or duplicate driver's license, the Department of Motor Vehicles may require the applicant to produce any identification that it determines is necessary in order to ensure that the name of the applicant stated in the application is his or her true, full name and that his or her residence address as set forth in the application is his or her true residence address.

This bill would provide that the provisions of this act shall not be construed to prohibit the Department of Motor Vehicles from accepting other documents establishing a true, full name, including, but not limited to, a certified copy of a Certificate of Registered Domestic Partnership, a certified copy of a marriage license or certificate, a copy of a document substantially equivalent to a Certificate of Registered Domestic Partnership, or a copy of a marriage certificate recording a marriage outside of this state, as specified.

(8) This bill would make other technical, nonsubstantive changes.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the Name Equality Act of 2007.

SEC. 2. (a) The Legislature finds and declares that the choice to adopt or not adopt a new name upon marriage or registration of domestic partnership is a profoundly personal reflection of one's individuality, equality, family, community, and beliefs.

(b) The Legislature, in enacting this act, intends to do both of the following:

(1) Ensure that all men and women who marry are treated equally with regard to the option of changing or not changing their names upon marriage, including, without limitation, changing their names on the forms for marriage licenses and certificates.

(2) Ensure that each party entering into a registered domestic partnership has an opportunity through the Declaration of Domestic Partnership to indicate his or her choice as to whether or not to change his or her name upon registration of domestic partnership and to ensure that domestic partners are treated the same as spouses with regard to that choice.

(3) Clarify the option under existing law to adopt or not adopt a new name upon marriage or registration of domestic partnership without being required to file an application for a change of name with a superior court pursuant to Title 8 (commencing with Section 1275) of Part 3 of the Code of Civil Procedure.

SEC. 3. Section 1279.6 of the Code of Civil Procedure is amended to read:

1279.6. No person engaged in a trade or business of any kind or in the provision of a service of any kind shall do any of the following:

(a) Refuse to do business with a person, or refuse to provide the service to a person, regardless of the person's marital status, because he or she has chosen to use or regularly uses his or her birth name, former name, or name

adopted upon solemnization of marriage or registration of domestic partnership.

(b) Impose, as a condition of doing business with a person, or as a condition of providing the service to a person, a requirement that the person, regardless of his or her marital status, use a name other than his or her birth name, former name, or name adopted upon solemnization of marriage or registration of domestic partnership, if the person has chosen to use or regularly uses that name.

SEC. 4. Section 298 of the Family Code, as amended by Chapter 179 of the Statutes of 2007, is amended to read:

298. (a) (1) The Secretary of State shall prepare forms entitled “Declaration of Domestic Partnership” and “Notice of Termination of Domestic Partnership” to meet the requirements of this division. These forms shall require the signature and seal of an acknowledgment by a notary public to be binding and valid.

(2) When funding allows, the Secretary of State shall include on the form notice that a lesbian, gay, bisexual, and transgender specific domestic abuse brochure is available upon request.

(b) (1) The Secretary of State shall distribute these forms to each county clerk. These forms shall be available to the public at the office of the Secretary of State and each county clerk.

(2) The Secretary of State shall, by regulation, establish fees for the actual costs of processing each of these forms, and the cost for preparing and sending the mailings and notices required pursuant to Section 299.3, and shall charge these fees to persons filing the forms.

(3) There is hereby established a fee of twenty-three dollars (\$23) to be charged in addition to the existing fees established by regulation to persons filing domestic partner registrations pursuant to Section 297 for development and support of a lesbian, gay, bisexual, and transgender curriculum for training workshops on domestic violence, conducted pursuant to Section 13823.15 of the Penal Code, and for the support of a grant program to promote healthy nonviolent relationships in the lesbian, gay, bisexual, and transgender community. This paragraph shall not apply to persons of opposite sexes filing a domestic partnership registration and who meet the qualifications described in subparagraph (B) of paragraph (5) of subdivision (b) of Section 297.

(4) The fee established by paragraph (3) shall be deposited in the Equality in Prevention and Services for Domestic Abuse Fund, which is hereby established. The fund shall be administered by the Office of Emergency Services, and expenditures from the fund shall be used to support the purposes of paragraph (3).

(c) The Declaration of Domestic Partnership shall require each person who wants to become a domestic partner to (1) state that he or she meets the requirements of Section 297 at the time the form is signed, (2) provide a mailing address, (3) state that he or she consents to the jurisdiction of the Superior Courts of California for the purpose of a proceeding to obtain a judgment of dissolution or nullity of the domestic partnership or for legal

separation of partners in the domestic partnership, or for any other proceeding related to the partners' rights and obligations, even if one or both partners ceases to be a resident of, or to maintain a domicile in, this state, (4) sign the form with a declaration that representations made therein are true, correct, and contain no material omissions of fact to the best knowledge and belief of the applicant, and (5) have a notary public acknowledge his or her signature. Both partners' signatures shall be affixed to one Declaration of Domestic Partnership form, which form shall then be transmitted to the Secretary of State according to the instructions provided on the form. Filing an intentionally and materially false Declaration of Domestic Partnership shall be punishable as a misdemeanor.

(d) The Declaration of Domestic Partnership form shall contain an optional section for either party or both parties to indicate a change in name pursuant to Section 298.6. The optional section shall require a party indicating a change in name to provide his or her date of birth.

SEC. 5. Section 298.5 of the Family Code is amended to read:

298.5. (a) Two persons desiring to become domestic partners may complete and file a Declaration of Domestic Partnership with the Secretary of State.

(b) The Secretary of State shall register the Declaration of Domestic Partnership in a registry for those partnerships, and shall return a copy of the registered form and a Certificate of Registered Domestic Partnership and, except for those opposite sex domestic partners who meet the qualifications described in subparagraph (B) of paragraph (5) of subdivision (b) of Section 297, a copy of the brochure that is made available to county clerks and the Secretary of State by the State Department of Public Health pursuant to Section 358 and distributed to individuals receiving a confidential marriage license pursuant to Section 503, to the domestic partners at the mailing address provided by the domestic partners.

(c) No person who has filed a Declaration of Domestic Partnership may file a new Declaration of Domestic Partnership or enter a civil marriage with someone other than their registered domestic partner unless the most recent domestic partnership has been terminated or a final judgment of dissolution or nullity of the most recent domestic partnership has been entered. This prohibition does not apply if the previous domestic partnership ended because one of the partners died.

(d) When funding allows, the Secretary of State shall print and make available upon request, pursuant to Section 358, a lesbian, gay, bisexual, and transgender specific domestic abuse brochure developed by the State Department of Public Health and made available to the Secretary of State to domestic partners who qualify pursuant to Section 297.

(e) The Certificate of Registered Domestic Partnership shall include the name used by each party before registration of the domestic partnership and the new name, if any, selected by each party upon registration of the domestic partnership.

SEC. 6. Section 298.6 is added to the Family Code, to read:

298.6. (a) Parties to a registered domestic partnership shall not be required to have the same name. Neither party shall be required to change his or her name. A person's name shall not change upon registration as a domestic partner unless that person elects to change his or her name pursuant to subdivision (b).

(b) (1) One party or both parties to a registered domestic partnership may elect to change the middle or last names by which that party wishes to be known after registration of the domestic partnership by entering the new name in the space provided on the Declaration of Domestic Partnership form without intent to defraud.

(2) A person may adopt any of the following middle or last names pursuant to paragraph (1):

(A) The current last name of the other domestic partner.

(B) The last name of either domestic partner given at birth.

(C) A name combining into a single last name all or a segment of the current last name or the last name of either domestic partner given at birth.

(D) A hyphenated combination of last names.

(3) (A) An election by a person to change his or her name pursuant to paragraph (1) shall serve as a record of the name change. A certified copy of the Certificate of Registered Domestic Partnership containing the new name, or retaining the former name, shall constitute proof that the use of the new name or retention of the former name is lawful.

(B) A certified copy of a Certificate of Registered Domestic Partnership shall be accepted as identification establishing a true, full name for purposes of Section 12800.7 of the Vehicle Code.

(C) Nothing in this section shall be construed to prohibit the Department of Motor Vehicles from accepting as identification other documents establishing a true, full name for purposes of Section 12800.7 of the Vehicle Code. Those documents may include, without limitation, a certified copy of a document that is substantially equivalent to a Certificate of Registered Domestic Partnership that records either of the following:

(i) A legal union of two persons that was validly formed in another jurisdiction and is recognized as a valid domestic partnership in this state pursuant to Section 299.2.

(ii) A legal union of domestic partners as defined by a local jurisdiction pursuant to Section 299.6.

(D) This section shall be applied in a manner consistent with the requirements of Sections 1653.5 and 12801 of the Vehicle Code.

(4) The adoption of a new name, or the choice not to adopt a new name, by means of a Declaration of Domestic Partnership pursuant to paragraph (1) shall not abrogate the right of either party to adopt a different name through usage at a future date, or to petition the superior court for a change of name pursuant to Title 8 (commencing with Section 1275) of Part 3 of the Code of Civil Procedure.

(c) Nothing in this section shall be construed to abrogate the common law right of any person to change his or her name, or the right of any person

to petition the superior court for a change of name pursuant to Title 8 (commencing with Section 1275) of Part 3 of the Code of Civil Procedure.

SEC. 7. Section 306.5 is added to the Family Code, to read:

306.5. (a) Parties to a marriage shall not be required to have the same name. Neither party shall be required to change his or her name. A person's name shall not change upon marriage unless that person elects to change his or her name pursuant to subdivision (b).

(b) (1) One party or both parties to a marriage may elect to change the middle or last names by which that party wishes to be known after solemnization of the marriage by entering the new name in the spaces provided on the marriage license application without intent to defraud.

(2) A person may adopt any of the following middle or last names pursuant to paragraph (1):

(A) The current last name of the other spouse.

(B) The last name of either spouse given at birth.

(C) A name combining into a single last name all or a segment of the current last name or the last name of either spouse given at birth.

(D) A hyphenated combination of last names.

(3) (A) An election by a person to change his or her name pursuant to paragraph (1) shall serve as a record of the name change. A certified copy of a marriage certificate containing the new name, or retaining the former name, shall constitute proof that the use of the new name or retention of the former name is lawful.

(B) A certified copy of a marriage certificate shall be accepted as identification establishing a true, full name for purposes of Section 12800.7 of the Vehicle Code.

(C) Nothing in this section shall be construed to prohibit the Department of Motor Vehicles from accepting as identification other documents establishing a true, full name for purposes of Section 12800.7 of the Vehicle Code. Those documents may include, without limitation, a certified copy of a marriage certificate recording a marriage outside of this state.

(D) This section shall be applied in a manner consistent with the requirements of Sections 1653.5 and 12801 of the Vehicle Code.

(4) The adoption of a new name, or the choice not to adopt a new name, by means of a marriage license application pursuant to paragraph (1) shall only be made at the time the marriage license is issued. After a marriage certificate is registered by the local registrar, the certificate may not be amended to add a new name or change the name adopted pursuant to paragraph (1). This requirement shall not abrogate the right of either party to adopt a different name through usage at a future date, or to petition the superior court for a change of name pursuant to Title 8 (commencing with Section 1275) of Part 3 of the Code of Civil Procedure.

(c) Nothing in this section shall be construed to abrogate the common law right of any person to change his or her name, or the right of any person to petition the superior court for a change of name pursuant to Title 8 (commencing with Section 1275) of Part 3 of the Code of Civil Procedure.

(d) This section shall become operative on January 1, 2009.

SEC. 8. Section 355 of the Family Code, as amended by Section 11 of Chapter 816 of the Statutes of 2006, is amended to read:

355. (a) The forms for the marriage license shall be prescribed by the State Department of Public Health, and shall be adapted to set forth the facts required in this part.

(b) The marriage license shall include an affidavit, which the applicants shall sign, affirming that they have received the brochure provided for in Section 358. If the marriage is to be entered into pursuant to subdivision (b) of Section 420, the attorney in fact shall sign the affidavit on behalf of the applicant who is overseas.

(c) The forms for the marriage license shall contain spaces for either party or both parties to indicate a change in name pursuant to Section 306.5.

SEC. 9. Section 358 of the Family Code is amended to read:

358. (a) The State Department of Public Health shall prepare and publish a brochure that shall contain the following:

(1) Information concerning the possibilities of genetic defects and diseases and a listing of centers available for the testing and treatment of genetic defects and diseases.

(2) Information concerning acquired immunodeficiency syndrome (AIDS) and the availability of testing for antibodies to the probable causative agent of AIDS.

(3) Information concerning domestic violence, including resources available to victims and a statement that physical, emotional, psychological, and sexual abuse, and assault and battery, are against the law.

(4) Information concerning options for changing a name upon solemnization of marriage pursuant to Section 306.5, or upon registration of a domestic partnership pursuant to Section 298.6. That information shall include a notice that the recording of a change in name or the absence of a change in name on a marriage license application and certificate pursuant to Section 306.5 may not be amended once the marriage license is issued, but that options to adopt a change in name in the future through usage, common law, or petitioning the superior court are preserved, as set forth in Section 306.5.

(b) The State Department of Public Health shall make the brochures available to county clerks who shall distribute a copy of the brochure to each applicant for a marriage license, including applicants for a confidential marriage license and notaries public receiving a confidential marriage license pursuant to Section 503. The department shall also make the brochure available to the Secretary of State, who shall distribute a copy of the brochure to persons who qualify as domestic partners pursuant to Section 297 and shall make the brochure available electronically on the Internet Web site of the Secretary of State.

(c) The department shall prepare a lesbian, gay, bisexual, and transgender specific domestic abuse brochure and make the brochure available to the Secretary of State who shall print and make available the brochure, as funding allows, pursuant to Section 298.5.

(d) Each notary public issuing a confidential marriage license under Section 503 shall distribute a copy of the brochure to the applicants for a confidential marriage license.

(e) To the extent possible, the State Department of Public Health shall seek to combine in a single brochure all statutorily required information for marriage license applicants.

SEC. 10. Section 103175 of the Health and Safety Code, as amended by Section 46 of Chapter 816 of the Statutes of 2006, is amended to read:

103175. (a) The marriage license shall contain as nearly as can be ascertained all of the following and other items as the State Registrar may designate:

(1) The first section shall include the personal data of each party married, including the date of birth, full given name at birth or by court order, birthplace, mailing address, names and birthplaces of each party's parents, last names at birth of each party's parents, the number of previous marriages, marital status, the name used prior to the intended marriage by each party at the time of the marriage license application, if the name is different from the name given at birth or by court order, and the new name, if any, selected by each party for intended use upon solemnization of the marriage.

(2) The second section shall include the signatures of parties married, license to marry, county and date of issuance of license, and the marriage license number.

(3) The third section shall include the certification of one person performing the ceremony, that shall show his or her official position including the denomination if he or she is a clergy or clergyperson, and the printed name, signature, and mailing address of at least one, and no more than two, witnesses to the marriage ceremony. The person performing the marriage ceremony shall also type or print his or her name and mailing address on the marriage license.

(b) The marriage license shall not contain any reference to the race or color of parties married.

SEC. 11. Section 103180 of the Health and Safety Code, as amended by Section 47 of Chapter 816 of the Statutes of 2006, is amended to read:

103180. (a) Sections 103150 and 103175 do not apply to marriages entered into pursuant to Section 307 of the Family Code. Subdivisions (b) and (c) govern the registration and the content of the License and Certificate of Non-Clergy Marriage of those marriages.

(b) Each marriage entered into pursuant to Section 307 of the Family Code shall be registered by the parties entering into the marriage or by a witness who signed under paragraph (2) of subdivision (a) of Section 307 within 10 days after the ceremony with the local registrar of marriages for the county in which the License and Certificate of Non-Clergy Marriage was issued.

(c) The License and Certificate of Non-Clergy Marriage entered into pursuant to Section 307 of the Family Code shall contain as nearly as can be ascertained the following:

(1) The personal data of each party married, including the date of birth, full given name at birth or by court order, birthplace, mailing address, names and birthplaces of each party's parents, last names at birth of each party's parents, the number of previous marriages, marital status, the name used prior to the intended marriage by each party at the time of the marriage license application, if the name is different from the name given at birth or by court order, and the new name, if any, selected by each party for intended use upon solemnization of the marriage.

(2) The license to marry.

(3) The county and date of issuance of the license.

(4) The marriage license number.

(5) The certification of the parties entering into the marriage, that shall show the following:

(A) The fact, time, and place of entering into the marriage.

(B) The printed name, signature, and mailing address of two witnesses to the marriage ceremony.

(C) The religious society or denomination of the parties married, and that the marriage was entered into in accordance with the rules and customs of that religious society or denomination.

(6) The signatures of the parties married.

(7) Any other items that the State Registrar shall designate.

(d) The License and Certificate of Non-Clergy Marriage shall not contain any reference to the race or color of parties married or to a person performing or solemnizing the marriage.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 13. (a) The amendments made to Section 355 of the Family Code, as amended by Section 11 of Chapter 816 of the Statutes of 2006, made by Section 8 of this act shall become operative on January 1, 2009.

(b) The amendments made to Section 103175 of the Health and Safety Code, as amended by Section 46 of Chapter 816 of the Statutes of 2006, made by Section 10 of this act shall become operative on January 1, 2009.

(c) The amendments made to Section 103180 of the Health and Safety Code, as amended by Section 47 of Chapter 816 of the Statutes of 2006, made by Section 11 of this act shall become operative on January 1, 2009.